Remarks

Claims 1 and 13 were previously pending in the subject application. By this Amendment, new claims 20 and 21 have been added. Thus, claims 1, 13, and 20-21 are now presented for consideration by the Examiner.

Support for the newly added claims can be found throughout the application including, for example, at pages 14 and 16 of the specification. Favorable consideration of the claims now presented, in view of the remarks set forth herein, is earnestly solicited.

The present invention advantageously controls *Ralstonia solenacearum* (hereinafter referred to as *Ralstonia*) in field-grown tomato plants by applying a bactericide comprising thymol, ethyl alcohol, and detergent. Generally, the dosage of thymol required to control Ralstonia is phytotoxic to plants, including tomato plants. The applicants surprisingly determined that *Ralstonia* becomes more sensitive to thymol if exposed to low levels of ethyl alcohol and detergent. Thus, when combined with ethyl alcohol and detergents, a lower dosage of thymol is needed to control Ralstonia. Advantageously, with the lower dosage of thymol, the phytotoxic effect of thymol to tomato plants is eliminated. Accordingly, the current applicants provide a novel and effective method of controlling Ralstonia using a mixture of thymol, ethyl alcohol, and detergents.

Claims 1 and 13 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Momol *et al.* (*Phytopathology* 89(6):S54, June 1999) in view of Maeda *et al.* (U.S. Patent. No. 4,780,471). The applicants respectfully traverse this grounds for rejection because the cited references, alone or in combination, do not disclose or suggest the advantageous method claimed by the current applicants.

As noted by the Office Action, the Momol *et al.* abstract does not teach using ethyl alcohol and a detergent in combination with thymol to control *R. solenacearum*. In fact, the Momol *et al.* abstract merely discloses applying thymol alone to *in vitro* and greenhouse grown tomatoes. Thus, there is no teaching provided by the Momol *et al.* abstract that would lead the skilled artisan to apply a mixture of thymol, ethyl alcohol, and detergent to field grown tomato plants to control *Ralstonia*.

Further, the Maeda *et al.* abstract does not cure the defects of the Momol *et al.* reference, or otherwise provide the necessary teachings to enable or even motivate a skilled artisan to apply a mixture of thymol, ethyl alcohol, and detergent to field grown tomatoes as a bactericide. The Maeda

et al. reference describes using ethyl alcohol and/or surfactant as inert carriers for a fungicidal compound (see column 6, line 66 through column 7, line 10). The Maeda *et al.* fails to disclose, or even suggest, combining thymol with ethyl alcohol and detergents for use in controlling *Ralstonia*.

The applicants are claiming a method for controlling the bacteria *R. solenacearum* using a mixture of thymol, ethyl alcohol, and detergent. The possibility that ethyl alcohol and detergents could be used as inert carriers for fungicidal compounds or that thymol is toxic to *R. solenacearum* in *in vitro* or greenhouse plants does not establish, or even imply, that the mixture of thymol, ethyl alcohol, and detergent would effectively control *R. solenacearum*.

As noted above, the ordinary dosage of thymol alone that is effective against *R. solanaceaum* is phytotoxic to plants (tomato and others). The current applicants have identified that ethyl alcohol and detergents have functions other than being inert carriers when combined with thymol. In fact, ethyl alcohol and detergents cause *R. solenacearum* to become more sensitive to thymol. The applicants have provided a unique and advantageous composition of thymol, ethyl alcohol, and detergents that surprisingly controls *R. solenacearum* using a low concentration of thymol and that is non-phytotoxic to plants. Clearly, neither the Momol *et al.* abstract nor the Maeda *et al.* reference teach nor suggest effectively controlling *Ralstonia* using a mixture of thymol, ethyl alcohol, and detergents.

A finding of obviousness is proper only when the prior art contains a suggestion or teaching of the claimed invention. Here, it is only the applicants' disclosure that provides such a teaching, and the applicants' disclosure cannot be used to reconstruct the prior art for a rejection under 35 U.S.C. §103. This was specifically recognized by the CCPA in *In re Sponnoble*, 56 CCPA 823, 160 USPQ 237, 243 (1969):

> The Court must be ever alert not to read obviousness into an invention on the basis of the applicant's own statements; that is we must review the prior art without reading into that art appellant's teachings. *In re Murray*, 46 CCPA 905, 268 F.2d 226, 112 USPQ 364 (1959); *In re Sprock*, 49 CCPA 1039, 301 F.2d 686, 133 USPQ 360 (1962). The issue, then, is whether the teachings of the prior art would, in and of themselves and without the benefits of appellant's disclosure, make the invention as a whole, obvious. *In re Leonor*, 55 CCPA 1198, 395 F.2d 801, 158 USPQ 20 (1968). (Emphasis in original)

The mere fact that the purported prior art could have been modified or applied in a manner to yield applicants' invention would not have made the modification or application obvious unless the prior art suggested the desirability of the modification. *In re Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Moreover, as expressed by the CAFC, to support a §103 rejection, "[b]oth the suggestion and the expectation of success must be founded in the prior art . . . ." *In re Dow Chemical Co., supra* at 1531. In the Momol *et al.* and Maeda *et al.* references, one finds neither.

Accordingly, the applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §103.

In view of the foregoing remarks and the addition of new claims, the applicants believe that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

The applicant also invites the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

David Saliwanchik

David R. Saliwanchik
Patent Attorney
Registration No. 31,794
Phone: 352-375-8100
Fax No.: 352-372-5800
Address: 2421 N.W. 41st Street, Suite A-1
Gainesville, FL 32606-6669

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